

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 258 of 1998

WITH

CRIMINAL REVISION APPLICATION NO. 152 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
2 to 5 No

STATE OF GUJARAT

Versus

USHAKANT MULSHANKAR MEHTA

Appearance in Cri.Rev.Appln. No. 258/98:

Mr. AJ Desai, APP for Petitioner
MR BHARGAV N BHATT for Respondent No. 1

Appearance in Cri. Rev.Appln. No.152 of 1998

Mr. J.V. Japee for petitioner
Mr. A.J. Desai, APP for Respondent No.1 State
Mr. Bhargav N. Bhatt for Respondents No. 2, 3, 4

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 08/05/98

ORAL COMMON JUDGEMENT

Heard learned Advocate Mr. J.V. Japee and learned APP Mr. AJ Desai, appearing for petitioners in each petition. Rule. learned Advocate Mr. Bhargav N. Bhatt appears on behalf of respondents in both the matters and waives service of rule.

2. The above stated Revision Applications arose from the impugned order passed by learned Additional Sessions Judge, Sabarkantha at Himatnagar dated 23.3.1998 in the proceedings of Session Case No. 93 of 1996 . That the petition bearing Criminal Revision Application No. 258 of 1998 is filed by State of Gujarat while petition bearing Criminal Revision Application No. 152 of 1998 is filed by one Balubhai Narottambhai Pandya, the original informant, on whose complaint, offence was registered vide Crime Register No.I-199/96 at Himatnagar Town Police Station.

3. That an incident had occurred on 28.6.1996, wherein the son of said Balubhai Narottambhai Pandya, the petitioner of Criminal Revision Application No.152 of 1998 was killed, and on his complaint, the Himatnagar Town Police Station registered an offence under Section 302 read with 34. That on investigation, respondents No. 2, 3 and 4 of Criminal Revision Application No. 152 of 1998 were made the accused and charge sheet was filed against them. That the said case was committed as Session Case No.93 of 96 which was assigned to Addl. Sessions Judge, Himatnagar. That after framing the charge, the prosecution produced the oral evidence and during the deposition of PW 13 - Rameshchandra Bhulabhai Patel, who is the Investigation Officer of the said crime, the prosecutor has referred to a document produced at Mark 8/17. That request of the prosecutor to exhibit the said document and admit the same in evidence was resisted on behalf of learned Advocate appearing for the accused contending that said statement is inadmissible in evidence in view of Sec.162 read with 154 of the Cr.P.C., 1973 (hereinafter referred to as the "Code"). That learned Addl. Sessions Judge accepted the contention urged on behalf of the accused, turned down the request

of prosecution to exhibit the document and as such State of Gujarat and the original informant, complainant said Balubhai Narottambhai Pandya has filed above stated Revision Applications to challenge the legality, validity and propriety of the above stated order.

4. Learned Advocate Mr. J.V. Japee appearing on behalf of petitioner - Balubhai Narottambhai Pandya has contended that document produced with mark Exhibit 8/17 is a non-cognizable complaint given by one Ushakant Mulshanker Mehta, who is one of the accused in the said matter. That said complaint was recorded vide N.C. Complaint No.61/96 on 29.6.1996 at about 1845 hours under Sec.323 by Police Inspector, Himatnagar town. That said document being a document containing statement recorded by Police Inspector who is authorised to reduce the statement in writing given before him under the provisions of Code and as such witness having identified the signature and contents, the document is deemed to be proved and as such is admissible. It is also submitted that said document is admissible in evidence in view of provisions of Secs. 8, 21 and 67 of the Indian Evidence Act. To support the submission, Shri Japee has referred to and relied on observations made by the Supreme Court in the matter of BHERUSING S/o KALYAN SINGH vs. STATE OF RAJASTHAN, reported vide 1995 AIR SCW 2126 and in the matter of BANDLAMUDDI ATCHUTA RAMAIAH v. STATE OF ANDHRA PRADESH, reported vide 1996 CRI. L.J. 4463.

5. As against that Shri Bhargav Bhatt, learned Advocate appearing on behalf of respondents in both the matters has contended that said document is inadmissible in evidence on two counts. Firstly, as per the facts deposed by PW-13 Shri RB Patel that he has recorded the said document after the registration of FIR in the Crime Register No.I 199/96, and as such, the document is recorded during the course of investigation of said crime and is hit by provisions of Sec.162 of the Code. Further more, the document contains inculpatory statement of accused which makes the document inadmissible in evidence under Sec. 25 of the Evidence Act. To support the said statement, Mr.Bhargav Bhatt has referred to and relied on decisions of this Court rendered in the matter of KOLI MADHA JINA vs. STATE OF GUJARAT, reported vide 26(1) GLR 136. He also referred to and relied on observations of Supreme Court in the matter of SOMA BHAI vs. STATE OF GUJARAT, reported vide AIR 1975 SC 1453.

5. That in the matter of Bheru Singh (Supra) the Supreme Court has observed vide para 17 & 19 as under :

" Where the accused himself lodges the first information report, the fact of his giving the information to the police is admissible against him as evidence of his conduct under section - X of the Evidence Act and to the extent it is non-confessional in nature, it would also be relevant under Section 21 of the Evidence Act but the confessional part of the first information report by the accused to the police officer cannot be used at all against him in view of the ban of Section 25 of the Evidence Act."

(para 17)

" Thus only that part of FIR is admissible in evidence which does not amount to a confession and is not hit by the provisions of Section 25 of the Evidence Act. The relationship of accused with the deceased; motive for commission of crime and presence of his sister-in-law do not amount to the confession of committing any crime. Those statements are non-confessional in nature and can be used against the accused as evidence under Section 3 of the Evidence Act. Production and seizure of sword by accused at the police station, which was blood stained, is also saved by the provision of the Evidence Act. However, the statement that the sword had been used to commit murders as well as manner of committing crime is clearly inadmissible in evidence. Thus, to such limited extent and save to that extent only the other portion of the first information report must be excluded from evidence as the rest of the statement amounts to confession of committing the crime and is not admissible in evidence."

(para 19)

6. According to submission of Shri Japee, as per the above stated observation, in the event of FIR given by the accused, the document could be separated by excluding inculpatory statement made by the accused and remaining portion of exculpatory statement is admissible. That in the instant case, except the inculpatory statement made by the accused Ushakant Mulshanker Metha, the remaining portion of NC Complaint including the number, date, time and the narration of the incident as well as the

signature of Police Inspector recording the complaint are exculpatory portion and as such admissible in evidence.

7. Further more, in the matter of Bandlamuddi Atchuta Ramaiah (supra) observations made in para 14 to 17 by Supreme Court imply that even if confessional statement is recorded in FIR, the remaining part of the FIR could be separated and admitted in evidence. That no such submission was advanced when High Court of Gujarat decided the matter of Koli Madha Jina (supra). It being a decision of the Supreme Court and later in time prevails upon the observations made by the High Court of Gujarat in the matter reported vide 26 (1) GLR 136 and thereby prayer made by the petitioner to exhibit the said document is required to be allowed.

8. The submission of Shri J.V.Japee cannot be accepted for the simple reason that in the matter of Bandlamuddi Atchuta Ramaiah (supra) the Supreme Court has observed that two FIRs were recorded and subject matter of discussion contains in paras 14 to 17 was based on the material recorded in second FIR in the matter before the Supreme Court. However, it does not appear from the report that second FIR referred to in para 5 of the judgment was recorded by the same Investigation Officer who started investigation after recording the first FIR and during the course of investigation. As such, the observations made in para 14 to 17 of the said judgment cannot be said to impliedly over ruled the judgment reported in 26 (1) GLR 136. Further more, the confessional statement of complainant Ushakant Mulshanker Mehta as recorded in the NC Complaint registered vide No. 61 of 1996 dated 29.6.1996 in the document produced vide Mark 8/17 is inextricably inseparable in sequence from the other statement and thereby it is difficult to uphold the submission that inculpatory statement could be separated and bracketed and rest of the portion of the document may be permitted to be taken on record. In my opinion, the reasons assigned by the High Court of Gujarat in the judgment reported vide 26(1) GLR 136 logically suggest that during the course of investigation if the Investigation Officer referred to the statement of the accused and the statement of the accused reveals the commission of some crimes, for which a NC Complaint is registered by the very Inspector though it is styled as complaint, it amounts to a statement of the accused and is not admissible in evidence under Section 162. Apart from the fact that it contains confessional statement of the accused. Following the said dictum of this High

Court, I hold that the contention urged on behalf of the petitioner State as well as petitioner Balubhai Narottambhai Pandya cannot be accepted and as a result both the Criminal Revision Applications fail and stand disposed of as rejected. Rule is discharged. Interim relief granted earlier in both the matters stand vacated.

p.n.nair